ANDOVER CONSERVATION COMMISSION MEETING MINUTES

August 21, 2012

Town of Andover
36 Bartlett Street
3rd Floor Conference Room
7:45pm

Conservation Commission Members in Attendance:

Chairman Donald Cooper, Commissioner Alix Driscoll, Commissioner Floyd Greenwood, Commissioner Kevin Porter and Commissioner Fran Fink via Skype. Staff Members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

194 Chandler Road

Present in Interest: Donald Ross, Cynthia Ross, Shakil Kapadio, Salmaan Kapadio, Sabiha Kapadia, Jerry McQuade, Barry McQuade, Cheryl McGuire, Sam Ameen, III, Charles Ameen, Sam Amron, Jr. and Lori Ameen.

Staff Recommendation: Open Hearing, Schedule Site Visit and Continue to September 5, 2012.

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed construction of a 2000 square foot parking area to be built as a trail head to Conservation Land is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Mr. Douglas presented this to the Commission. The project is a small parking area at the Beloian Reservation. When the Commission acquired the property we took on an obligation to the seller of the property to construct parking, signage and a trail head. This project opens access to one of the Commission's largest reservations. The parking area will be about 50 feet from the wetland. The parking area will most likely be made of stone dust.

The Commission received a letter from Don Ross stating that some of the abutters did not receive notice of the September 5, 2012 hearing. The site visit will be September 5, 2012 at 8:00am.

Donald Ross informed the Commission that Attorney Rick Kelly is representing the neighbors who are against this project. Chairman Cooper suggested Attorney Kelly be present at the September 5, 2012 hearing.

Sal Kapadio read a letter regarding the concerns regarding the parking area ie, inadequate lighting, trespassing, suspicious activity and illegal dumping.

Cheryl McQuire inquired if it was a conflict of interest for the Commission to be the Applicant and the deciding board. Her concern is that the parking lot is hidden which could lead to illegal activity and how would the Commission prevent this activity? Will the lot be open 24 hours a day? Will there be lighting?

Shakil Kapadio informed the Commission that he sent a letter via Federal Express regarding his concerns.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to continue to September 5, 2012, it was seconded by Commission Greenwood and unanimously approved.

4 Eagle Way

Present in Interest: Donald Cooper

Staff Recommendation: Approve as Neg.3 with conditions.

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed replacement of an existing railroad wall with a stone wall is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Agent Cleary presented this to the Commission. The Application is complete and under the WPA only. The house dates back to 1975. Waivers have been requested for an engineered plan. There will be no change in contours and the retaining wall will be replaced in the same footprint 45 feet from the wetland. Haybales are in place as erosion control.

Commissioner Greenwood made a Motion to accept the Waiver, it was seconded by Commissioner Porter and unanimously approved.

Commissioner Greenwood made a Motion to Approve as a Neg.3 with conditions, it was seconded by Commissioner Porter and unanimously approved.

319 South Main Street

Staff Recommendation: Approve as Neg.3 with conditions

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed abandonment of existing septic system and tie into town sewer is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Agent Cleary presented this to the Commission. The Application is complete and under the WPA only. There are 2 options available to the Applicant for the sewer tie in. Neither option will impact the wetland. The Commission needs to be informed of which option the Applicant chooses.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Approve as Neg.3 with the condition that the Applicant informed the Commission of which option he chooses, it was seconded by Commissioner Porter and unanimously approved.

221 Highland Road

Present in Interest: Robert Murphy, Bill Walsh, Christine Flores, and Scott Laury

Staff Recommendation: Schedule Site Visit and Continue to Date Uncertain.

Public Hearing on a Notice of Intent filed under the Massachusetts Wetland Protection Act and/or Andover Wetlands Protection By-Law for the proposed removal of invasive plant species, tree stumps and machine parts, including restoring jurisdictional filled area, placement of wooden sheds and fencing.

Agent Cleary presented this to the Commission. Enforcement Orders were issued in October, 2011 and again in January, 2012 for deforestation, filling wetland area, building with in the 100 foot buffer and animals on the property. The second Enforcement Order is in litigation. The Notice of Intent is appropriately filed under the WPA and the Andover Wetlands Protection By-Law. Our main question is does the Applicant intend to comply with the second Enforcement Order with the Notice of Intent? Robert Murphy addressed the Commission on behalf of the Applicant and informed the Commission that the second Enforcement Order was to cease and desist all work until the Order of Conditions is issued, however the owner never received the Order of Conditions. Agent Cleary advised the Commission that the second Enforcement Order was a "conditional" Enforcement Order, meaning it contained conditions to be followed for the site to come into compliance. This Enforcement Order did not require the filing of a Notice of Intent for an Order of Conditions. Mr. Murphy stated that the Applicant's intent is to follow through with correcting the issues raised in the Enforcement Order and Order of Conditions to be issued. There was some work done in the wetlands to clean up trash, etc., left by the previous owner. There was work and filling within the buffer zone. The new plan provides a fairly good wetland line and buffer line. Mr. Murphy requested a site visit by the Commission.

The proposed course of action by the Commission is as follows:

Determine if the Applicant will comply with the Enforcement Orders;

Determine if the animals are to be on site; if so, long term maintenance plan to handle manure should be required;

After-the-fact filing for a portion of the deck and concrete slab for two stall garage should be included in the filing;

What future work, for instance driveway to slab garage, clearing, fencing, removal of vegetation, should be included;

Removal of vegetation should come with profession plan from a wetland scientist or other credentialed professional and noted on the plan.

Since the area is heavily vegetated, the restoration plan provided by Seekamp could be followed precisely. No plantings were proposed in the BVW.

Agent Cleary also provided the missing submittal requirements as follows: Complete Project Narrative-clarification of proposed work; Abutter Affidavit of Service; Certification that all proposed work will comply with our regulation setbacks under the By-Law;

50 foot no-build is not depicted on plan;

25 foot NDZ bounds are not depicted on the plan;

Shrub plantings not depicted on the plan;

No proposed contours on the plan; and

No tree line on the plan or trees to be planted as well as fencing, clearing, location and type of vegetation to be removed.

DEP has not issued any comments as this is still under review. Agent Cleary will ask Town Counsel if she can condition the issuing of the Order of Conditions with an acknowledgement that the action will be dropped.

Commissioner Fink expressed her concern that it needs to be clear what work is proposed and the Commission must have an As-Built plan for the November, 2011 work already done. Will the future work include a driveway, replacement plantings, limit or work, fencing, animals and if so, what kind, how many and how do we handle the waste?

Agent Cleary informed Mr. Murphy that a professional plan is needed to remove plantings and need to determine the animals on the site and provide a long terms maintenance plan for manure. Agent Cleary agreed to email the requirements, comments and concerns to Mr. Murphy.

The site visit is scheduled for September 8, 2012 at 7:30am.

Bill Walsh, an abutter, stated the he had never observed trash on the property.

Christine Flores, an abutter, informed the Commission that the neighbors use the area for walking and has never seen trash in the area.

Scott Laury, an abutter on the side where the animals are kept wants to know what kind of animals will be kept on the property and how many.

Mr. Murphy informed the Commission that there are 3 dwarf goats which are herbivores on the property. The goats have been moved to another property until they are allowed to return by zoning.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to Continue to a Date Uncertain, it was seconded by Commissioner Driscoll and unanimously approved.

17 County Road

Present in Interest: Bill MacLeod

Staff Recommendation: Close Public Hearing and Issue Order of Conditions.

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law, for the proposed removal of an existing garage and driveway and the construction of a new driveway in the riverfront area.

Agent Cleary presented this to the Commission. This was continued from August 7, 2012 for a site visit, fees to be paid, revised plan, driveway alteration, riverfront impact and flood plain to be provided. The site visit took place August 11, 2012, the additional fees have been paid and the driveway work has been clarified.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Close the Public Hearing and Issue the Order of Conditions as drafted, it was seconded by Commissioner Greenwood and approved with Commissioner Porter abstaining.

20 New England Business Center Drive Present in Interest: Wesley Williams and Robert Truax

Staff Recommendation: Continue to September 5, 2012.

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law, for the proposed reclaiming and installation of new pavement to the existing paved parking areas, including installing new stormwater treatment units and drainage pipes.

Mr. Douglas presented this to the Commission. This was continued from July 17, 2012 for purposes of locating groundwater and continued again on August 7, 2012 at Applicant's request due to DEP comments. The project consists of repaving a damaged parking area with the same footprint. DEP requested a stormwater report and water table levels.

Robert Truax presented the revised plan to the Commission. 5 Test Pits have been dug, on the higher side of the parking area, there is a 3 foot water table then a sand layer and then clay. In the front of the parking area, there is a 2 foot water table and on the lower side of the parking area the water table is 12 inches. The parking area needs to be raised by 6 inches. This will be accomplished by grinding the existing pavement on the parking area and using it in the lower area to bring up the 6 inches necessary and any excess will be removed. A gravel base of 12 inches will be put down, 8 inches of which will be from the grinding of the parking area. Water drains will be put in place 2 feet below the pavement to allow draining into the wetland. The Stormwater Report presented goes through each requirement and addresses each one.

There will be no increase in runoff or impervious area. The outlet structures are being redone, with a few being lowered, and riprap used.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to Close the Public Hearing and issue the Order of Conditions within 21 days, it was seconded by Commissioner Driscoll and approved by vote of 3-2 with Commissioners Porter and Fink opposed.

ACTION ITEMS:

3 Manning Way, Lot 5

Staff Recommendation: Withdraw.

Request for a 1 year Extension to the Order of Conditions. Applicant is requesting the withdrawal of the request and is proceeding under the Amended PEA, giving them an additional 2 year extension,

Commissioner Driscoll made a Motion to allow the withdrawal, it was seconded by Commissioner

Greenwood and unanimously approved.

337-341 South Main Street

Staff Recommendation: Approve.

Vote to sign Deed for land to be conveyed to the Conservation Commission under their care and

custody. 2 lots being donated which are mostly wetlands. Deed to be signed in esrow.

4 Christian Way

Staff Recommendation: Continue

Issuance of an Order of Conditions. The Public Hearing was closed on August 7, 2012 with no DEP# received. At present, DEP has not received the Application and it is an "incomplete application". The project is nearly entirely outside the 100 foot zone consisting of a single family home. The Commission has 7 days to issue the Order of Conditions. Chairman Cooper stated that DEP could appeal if they do

find anything in the Application.

Commissioner Driscoll made a Motion to issue the Order of Conditions approved with conditions, it was

seconded by Commissioner Greenwood and unanimously approved.

24 Filter Bed Road

Staff Recommendation: Issue guidelines for DEP for Superseding Order of Conditions and participate in

site visit.

Issuance of an Order of Conditions. The Public Hearing was closed per Applicant's request on August 7,

2012. The site visit was scheduled for August 13, 2012 at 11:00am. On August 8, 2012 the Applicant

sent a request for a Superseding Order of Conditions. Staff will issue guide document and participate in site visit.

0 Lowell Street Rolling Green

Present in Interest: Maureen Hanley

Staff Recommendation: Issue Order of Conditions.

Issuance of an Order of Conditions. The Public Hearing was closed on August 7, 2012.

Commissioner Driscoll questioned whether the Commission should not permit the holding tank next to the building. Do we have the authority to make them remove the holding tank? Commissioner Driscoll would like to remove "suggest" in Paragraph 9 and replace with prohibit. She believes the holding tank is structurally unsound, unhealthy and dangerous.

Chairman Cooper does not want Isolated Land Subject to Flooding, approving 1 thing and not something else. The Applicant would like the Army Corp of Engineers to tell him to remove it. The Applicant must come before the Commission to remove the holding tank.

Commissioner Fink asked that the Commission compel the revision of the open space boundaries. Access to open space should be a condition of approval. She recommended sending a letter to the ZBA and in the Order of Conditions to request access to the open space.

The Commission will be approving the plan that did NOT include the holding tank, and not approving the plan that includes remnants of Isolated Land Subject to Flooding.

Commissioner Driscoll made a Motion to issue the Order of Conditions as drafted and amended at the August 21, 2012 Meeting within 7 days, it was seconded by Commissioner Greenwood.

289 River Road

Staff Recommendation: Issue Order of Resource Area Delineation.

Issuance of Order of Resource Area Delineation. Public Hearing was closed August 7, 2012.

Commissioner Greenwood made a Motion to issue the Order of Resource Area Delineation, it was seconded by Commissioner Driscoll and unanimously approved.

410 High Plain Road

Staff Recommendation: Issue Order of Conditions.

Issuance of an Order of Conditions. Public hearing was closed August 7, 2012 and the site visit is complete. Waiver for distance for the driveway.

Commissioner Greenwood made a Motion to issue the Order of Conditions, it was seconded by Commissioner Driscoll and unanimously approved.

Merrimack College

Walsh Way

Present in Interest: Bob Coppola

Staff Recommendation: Issue Order of Conditions.

Issuance of an Order of Conditions. Peer review by ESS done and plans have been revised. Any comments must be sent to Mr. Douglas within 7 days to issue the Order of Conditions.

Commissioner Porter made a Motion to Approve the draft Order of Conditions, it was seconded by Commissioner Greenwood and unanimously approved.

Commissioner Porter made a Motion to Approve the amended Order of Conditions, it was seconded by Commissioner Driscoll and unanimously approved.

CONSENT AGENDA:

69 Ballardvale Road

Issuance of a Certificate of Compliance.

21 Pomeroy Road

Issuance of a Satisfactory Completion of Work.

22 Blanchard Street

Issuance of a Satisfactory Completion of Work Certificate.

Minutes

Approval of minutes from Meeting of July 17, 2012.

Commissioner Driscoll made a Motion to Approve the Consent Agenda, it was seconded by Commissioner Porter and unanimously approved.

The next meeting will be held September 5, 2012 at 7:45pm. The Meeting was adjourned at 9:50pm by Motion of Commissioner Driscoll, seconded by Commissioner Greenwood and unanimously approved.

Respectfully submitted,

Lynn Viselli, Recording Secretary